

## PHYSICAL THERAPY BOARD

### PROPOSED ADDENDUM TO THE FINAL STATEMENT OF REASONS

**Hearing Date: October 25, 2007**

**Subject Matter of Regulations: Citations and Fines**

**Sections Affected: 1399.25 & 1399.26**

**Updated Information:**

**Specific purpose of each adoption, amendment or repeal:**

*Regarding 1399.25(a):*

Language has been added to clarify that the board may issue a citation that contains either an administrative fine or an order of abatement, or it may contain both. This preserves the board's flexibility to appropriately respond to violations and provides licensees notice of the possible consequences of violation.

Language was also added to explain that the board may issue a citation for any violation of the Physical Therapy Practice Act, the board's regulation or any other statute or regulation for which the board has authority to issue a citation. As explained in the original Initial Statement of Reasons, this section replaces the comprehensive list of violations for which a citation may be issued that is being repealed in section 1399.26. This change will enable the board to more efficiently enforce its laws without having to make a change to its regulations when a new statute or regulation is adopted.

Finally, the proposed text in section 1399.25(a)(3) has been amended from "*may*" issue a citation to "*has authority to*" issue a citation, to make it clearer that the board will only issue citations pursuant to statutes and regulations for which the Board has authority.

*Regarding 1399.25(b):*

The first sentence in this subsection has been deleted for clarity because the language was self explanatory. The board does not have authority to levy a fine or issue an order of abatement without a citation. The deletion makes the regulation clearer and a modified version of the statement was added to (a) above.

An additional amendment has been made to modify the manner in which the citation is served upon the individual. Rather than personally or by certified mail, the citation may now be served in a manner authorized pursuant to Business and Professions Code, section 124. This change is made for consistency with other service requirements for documents served by the board.

*Regarding section 1399.25(c):*

This section was added to establish that the general range for an administrative fine shall be between \$100 and \$2,500.

With the repeal of section 1399.26, the criteria to be considered when determining the amount of an administrative fine need to be defined. Based on a recommendation by the Board's legal counsel, the Board researched other health care boards' standardized guidelines for issuing a citation. The board considered the standards in sections 1775.2 [relating to Board of Pharmacy] and 4248 [relating to Bureau of Naturopathic Medicine] of Title 16 of the California Code of Regulations (CCR) as well as the required criteria of BPC section 125.9(b)(3).

After review of those sections, the board determined that the factors that must be considered when setting the amount of an administrative fine should be (1) the good or bad faith of the person, (2) the nature and severity of the violation, (3) whether the violation was willful, (4) history of the violations of the same or similar nature, (5) the extent to which the cited person cooperated with the board, and (6) the extent to which the cited person mitigated or attempted to mitigate damage. Consideration of other mitigating or extenuating factors is not precluded but, in any event, would likely fall under the categories above. The reason these factors will be considered is because they bear on the severity of the violation and help establish the fine level appropriate to deter future violations.

In response to the Office of Administrative Law's objection to the proposed regulations based on a clarity standard, the Board revisited the previously approved criteria and decided to delete the language in sub section (c)(7) of the initially proposed text. As noted above, section 1399.25(c)(1) through (6) effectively describe the factors to be considered when determining the amount of the administrative fine but, in any case, are not exclusive.

*Regarding 1399.25(d):*

Business and Professions Code 125.9 as originally adopted authorizes the Physical Therapy Board of California (Board) to issue citations with fine amounts up to \$2,500. On January 1, 2004, Business and Professions Code 125.9 was amended to increase the amount of a civil penalty that could be assessed as part of a citation from \$2,500 to \$5,000.

A citation with a fine amount over \$2,500 and up to \$5,000 would enhance the Board's enforcement authority where exceptional circumstances are present by preventing future violations and thereby strengthening consumer protection.

The regulation clarifies that the more severe administrative fine may be imposed only where a violation has an immediate relationship to the health and safety of a person,

where multiple violations occurred that demonstrate a willful disregard of the law, where violation is perpetrated against a senior citizen or disabled person, or where the cited person has a history of two or more prior citations of the same or similar violations. These factors represent a policy to only impose fines over \$2,500 and up to the maximum in exceptional circumstances and as needed to deter violations.

*Regarding 1399.25(e):*

As noted in the original ISR, the term purged has been replaced with the term “destroyed” to make it clear that citations shall be destroyed and not just purged from the licensee’s file. The purpose of the destruction date is to establish a time after which the records will no longer be available to the public. Since a citation is a record subject to disclosure to the public, and will always be public if it exists, destroying it means the citation cannot be provided to the public. The term “purge” may imply that a citation was removed from the licensee’s file, but kept in another location, in which case the citation would still have to be disclosed upon request.